

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

RONALD FORTUNE, et al.,

No. C 13-03172 JSW

Plaintiffs,

**ORDER GRANTING MOTION TO  
STAY AND VACATING  
HEARING ON MOTION TO  
REMAND PENDING RULING  
FROM MDL AND CASE  
MANAGEMENT CONFERENCE**

v.

MCKESSON CORPORATION, et al.,

Defendants.

(Docket Nos. 11, 12)

**INTRODUCTION**

This matter comes before the Court upon consideration of the Motion to Stay All Proceedings Pending Transfer by the Judicial Panel on Multidistrict Litigation to MDL 1871 (E.D. Pa.), filed by Defendant Glaxosmithkline LLC (“GSK”) (Docket No. 14). The Court has considered the parties’ papers, relevant legal authority, and the record in this case, and it finds the motion suitable for disposition without oral argument. *See* N.D. Civ. L.R. 7-1(b). The Court VACATES the hearing scheduled for November 15, 2013, and it GRANTS GSK’s motion to stay. In light of this ruling, the Court VACATES the hearing scheduled for November 1, 2013, on Plaintiffs’ motion to remand (Docket No. 12), and the case management conference scheduled for October 11, 2013. The Court shall reschedule these hearings, if necessary.

**BACKGROUND**

On or about October 16, 2007, the Judicial Panel on Multidistrict Litigation (“JPML”) established a multidistrict litigation regarding product liability cases involving the drug

1 Avandia®, *In re Avandia Marketing, Sales Practices, and Products Liability Litigation*, MDL-  
2 1871 (“*In re Avandia*”). (Docket No. 11-2, Declaration of Steven J. Boranian (“Boranian  
3 Decl.”), ¶¶ 2-3, Ex. B.)

4 On June 27, 2013, the Plaintiffs filed their Complaint against GSK and McKesson  
5 Corporation in the Superior Court of the State of California for the County of San Francisco  
6 (“San Francisco Superior Court”), and asserted a number of state law claims based on injuries  
7 they allegedly suffered as a result of using Avandia®. (*See generally* Notice of Removal, Ex. A  
8 (Complaint).) This case is one of many cases filed in San Francisco Superior Court by various  
9 attorneys, and is one of several cases pending before the undersigned.

10 On July 9, 2013, GSK removed this action, and others, to this Court. GSK asserts that,  
11 because McKesson has been fraudulently joined, the Court has diversity jurisdiction. (Notice of  
12 Removal ¶ 17.) GSK also contends that this case qualifies as a “mass action” under the Class  
13 Action Fairness Act (“CAFA”), pursuant to 28 U.S.C. Section 1332(d)(11). (*Id.* ¶ 5.) At the  
14 time of removal, GSK had not been served with the Complaint, but stated that, on information  
15 and belief, McKesson was served on or about July 1, 2013. (*Id.* ¶ 6.)

16 On July 16, 2013, GSK notified the JPML that this action was pending, and it seeks to  
17 stay this case pending transfer to *In re Avandia*. (Boranian Decl., ¶ 4.) The JPML has issued a  
18 conditional transfer order, but Plaintiffs oppose that transfer order. Plaintiffs oppose a stay in  
19 this case, and they have filed a separate motion to remand this case to San Francisco Superior  
20 Court.

### 21 ANALYSIS

22 “[T]he power to stay proceedings is incidental to the power inherent in every court to  
23 control disposition of the cases on its docket with economy of time and effort for itself, for  
24 counsel, and for litigants.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). “The exertion of  
25 this power calls for the exercise of sound discretion.” *CMAX, Inc. v. Hall*, 300 F.2d 265, 268  
26 (9th Cir. 1962). Accordingly, it is within this Court’s discretion to determine whether a stay is  
27 warranted. The competing interests that a district court must weigh in deciding whether to grant  
28 a stay include: (1) “possible damage which may result from granting a stay, (2) the hardship or

1 inequity which a party may suffer in being required to go forward, and (3) the orderly course of  
2 justice measured in terms of the simplifying or complicating of issues, proof, and questions of  
3 law which could be expected to result from a stay.” *Id.* (citing *Landis*, 299 U.S. at 254-55).

4 In the context of a motion to stay pending a motion to consolidate cases before the  
5 JPML, district courts should consider the following factors: (1) potential prejudice to the non-  
6 moving party; (2) hardship and inequity to the moving party if the action is not stayed; and (3)  
7 the judicial resources that would be saved by avoiding duplicative litigation if the cases are in  
8 fact consolidated. *Rivers v. Walt Disney Co.*, 980 F. Supp. 1358, 1360 (C.D. Cal. 1997).

9 “Generally, jurisdiction is a preliminary matter that should be resolved before all  
10 others.” *Leeson v. Merck & Co., Inc.*, 2006 WL 3230047, \*2 (E.D. Cal. Jan. 27, 2006); *see also*  
11 *Villarreal v. Chrysler Corp.*, 1996 WL 116832, at \*1 (N.D. Cal. Mar.12, 1996) (“Judicial  
12 economy will best be served by addressing the remand issue [before a party’s motion to stay]  
13 because a determination on this issue will facilitate litigation in the appropriate forum.”). Some  
14 courts, however, have held that “the calculus changes somewhat when deference to a MDL  
15 court will further ‘the uniformity, consistency, and predictability in litigation that underlies the  
16 MDL system.’” *Leeson*, 2006 WL 3230047, \*2 (quoting *Conroy v. Fresh Del Monte Produce*  
17 *Inc.*, 325 F. Supp. 2d 1049, 1053 (N.D. Cal.2004)).

18 Plaintiffs’ motion to remand raises issues that are similar to issues raised in motions to  
19 remand in the cases that are assigned to the undersigned Judge as well the cases assigned to  
20 other judges in this District. Further, the presiding judge in *In re Avandia* has addressed many  
21 of these same issues, including fraudulent joinder, fraudulent misjoinder of plaintiffs, the forum  
22 defendant rule, and questions relating to removal by defendants who have not yet been served.  
23 *See, e.g., In re Avandia*, 624 F. Supp. 2d 396, 418-20 (E.D. Pa. 2009). Therefore, a stay will  
24 promote judicial economy, uniformity and consistency in decision making. Further a short stay  
25 will not prejudice Plaintiffs, because they can renew their motion to remand in MDL 1871. If  
26 the case is not transferred, this Court will resolve the motion to remand expeditiously. Finally,  
27 a brief stay will avoid duplicative litigation. Indeed, this Court already has granted motions to  
28 stay in the *Avandia* cases pending on its docket. The same is true for other courts within this

1 District. (*See* Boranian Decl., Ex. A; Docket No. 16-1, Declaration of Steven J. Boranian in  
2 Support of GSK Reply, Ex. A.)

3 Accordingly, the Court GRANTS the motion to stay pending a ruling by JPML on  
4 whether this case will be transferred to *In re Avandia*, MDL 1871. The parties shall file a joint  
5 notice with the Court within seven (7) days of any such ruling.

6 **IT IS SO ORDERED.**

7 Dated: August 12, 2013

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9 JEFFREY S. WHITE  
10 UNITED STATES DISTRICT JUDGE  
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